

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
(Omaha)**

BMO HARRIS BANK N.A.,
Plaintiff,

v.

CANNING LOGISTICS SERVICE LLC
and DORAN POST,

Defendants.

Case No. 8:17-cv-461

COMPLAINT FOR BREACH OF CONTRACT

Plaintiff BMO HARRIS BANK N.A. (“BHB”), for its Complaint for Breach of Contract against Defendants Canning Logistics Service LLC (“Canning Logistics”) and Doran Post (“Post”) alleges and states as follows:

PARTIES

1. Plaintiff BHB is a corporation and national bank association with its principal place of business in Chicago with an office at 111 W. Monroe Street, Chicago, Illinois 60603.

2. Canning Logistics is a company existing pursuant to the rules and laws of the State of Nebraska, with a principal place of business located at 13924 Gold Circle, Suite 102, Omaha, Nebraska 68144, and as such, is within the District of Nebraska.

3. Post is an individual, whose address is located at 400 N. 62nd Street, Omaha, Nebraska 68132. He is a citizen of the State of Nebraska and resides within the District of Nebraska.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there is diversity in citizenship and there is an amount in controversy that exceeds \$75,000.

5. This judicial district is proper venue for this proceeding pursuant to 28 U.S.C. §1391(b)(2), as the Defendants reside, live or do business in the District of Nebraska and as a substantial part of the events giving rise to the cause of action, including signing of the contracts at issue, occurred in the District of Nebraska.

BACKGROUND

Loan and Security Agreement

6. On or about May 4, 2016, Canning Logistics entered into a Loan & Security Agreement (hereinafter “Agreement”) with BHB in the total amount of \$152,546.88, attached hereto as **Exhibit A**, for the purchase of the following:

Year	Manufacturer	Model	Description	Serial Number
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2530CU468825
2012	THERMO KING	SB230	SB230	6001102181
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2533CM469905
2012	THERMO KING	SB230	SB230	6001099356
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2534CU468827
2012	THERMO KING	SB230	SB230	6001102183
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2537CU468823
2012	THERMO KING	SB230	SB230	6001102179

7. Pursuant to the Agreement, Canning Logistics agreed to make monthly payments for the purchase of the above Equipment (hereinafter “Equipment”) beginning on or about June 4, 2016 for a term of 48 months.

8. Canning Logistics used the Equipment at its address located at 13924 Gold Circle, Suite 102, Omaha, Nebraska 68144.

9. Pursuant to the Agreement, Canning Logistics was obligated to pay a minimum monthly payment of \$3,178.06.

10. Pursuant to paragraph 5.1 of Agreement 1, entitled “Events of Default”, Canning Logistics will be in default under the loan if “Debtor” fails to pay when due any amount owed by it to BHB under this Agreement.

11. Pursuant to paragraph 5.2 of the Agreement, entitled “Remedies,” upon default by Canning Logistics, BHB may “declare the indebtedness hereunder to be immediately due and payable.”

12. On or about June 4, 2017, Canning Logistics defaulted under the terms of the Agreement by failing to make the minimum monthly payment.

Continuing Guaranty

13. On or about May 4, 2016, Post executed a Continuing Guaranty (“Guaranty”) personally and unconditionally guarantying his performance on all of his obligations to BHB under the Agreement. A true and accurate copy of Guaranty is attached hereto as **Exhibit B**.

COUNT I: BREACH OF CONTRACT (LOAN AND SECURITY AGREEMENT)

14. BHB incorporates by reference Paragraphs 1 through 13 as if set forth at length herein.

15. BHB and Canning Logistics entered into a valid contract (hereinafter the "Agreement") where Canning Logistics agreed to make monthly payments to BHB for use of the Equipment (hereinafter the "Equipment").

16. Canning Logistics defaulted on the terms of the Agreement and therefore is in default for failure to pay.

17. BHB sustained significant damages in the amount of \$108,146.98 due to Canning Logistics' breach and default of the Agreement.

WHEREFORE, Plaintiff, BMO Harris Bank N.A., demands the following relief against Defendant Canning Logistics Service LLC compensatory damages in the amount of \$108,146.98, as well as interest, reasonable attorneys' fees and costs; and such other relief as the Court may deem equitable and just.

COUNT II: BREACH OF CONTRACT (CONTINUING GUARANTY)

18. Plaintiff incorporates by reference Paragraphs 1 through 17, as if set forth at length herein.

19. The Guaranty represents a contractual agreement between BHB and Post.

20. By executing the Guaranty, Post guarantied the repayment of all amounts due under the Agreements and expressly agreed, and is obligated, to pay BHB's reasonable attorney fees and costs of any action upon his default.

WHEREFORE, Plaintiff, BMO Harris N.A., demands judgment against Defendant Timothy Post in the amount of \$108,146.98 as well as reasonable attorney fees and costs and such other relief as the court may deem equitable and just.

COUNT III: REPLEVIN

21. Plaintiff incorporates by reference Paragraphs 1 through 20, as if set forth at length herein.

22. Pursuant to paragraph 5.2 of the Agreements, upon default by Canning Logistics, BHB may “exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to require Canning Logistics to assemble the Equipment and deliver it to BHB at a place to be designated by BHB and to enter any premises where the Equipment may be without judicial process and take possession thereof.”

23. BHB has notified Canning Logistics of its intention to exercise its right to repossess the Equipment pursuant to the terms of the Agreement.

24. In response, Canning Logistics has refused, and continues to refuse BHB access to the Equipment. Canning Logistics is denying BHB access to the following unrecovered Equipment:

Year	Manufacturer	Model	Description	Serial Number
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2530CU468825
2012	THERMO KING	SB230	SB230	6001102181
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2533CM469905
2012	THERMO KING	SB230	SB230	6001099356
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2534CU468827
2012	THERMO KING	SB230	SB230	6001102183
2012	UTILITY	REFRIGERATED VANS	REFRIGERATED VANS: 53'	1UYVS2537CU468823
2012	THERMO KING	SB230	SB230	6001102179

25. Canning Logistics defaulted on the terms of the Agreement and therefore is in default for failure to pay.

26. Plaintiff's interest therein will be adversely affected by the continued use by the Defendant of the Equipment due to wear and tear as well as depreciation.

WHEREFORE, Plaintiff, BMO Harris Bank N.A., demands the following relief against Defendant, Canning Logistics a judgment in favor of the Plaintiff and against the Defendant Canning Logistics for possession of the Equipment; and an award of attorneys' fees and costs as provided for by written agreement, and reasonable costs, and such other relief, as the Court may deem equitable and just.

Date: December 1, 2017

WONG FLEMING, P.C.
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